

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0034

Sales Tax

Calendar Years 1998 & 1999

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1998 and 1999.

The taxpayer is a fast food purveyor. The taxpayer's commercial domicile is located out-of-state. The taxpayer has 26 locations in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty assessment be waived based on the fact the taxpayer's error was unintentional. The error in the audit consisted of mislocated records needed to prove tax was paid.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions

provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer’s penalty protest is denied.

FINDING

The taxpayer’s penalty protest is denied.